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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

FAIR OAKS CEMETERY DISTRICT et al.,

Plaintiffs and Appellants,

v.

COUNTY OF SACRAMENTO et al.,

Defendants and Respondents.

C066643

(Super. Ct. No. 34-
2010-00068616-CU-MC-
GDS)

Although not characterized as such, this is an in rem reverse validation action by plaintiffs Fair Oaks and Sylvan Cemetery Districts (Fair Oaks and Sylvan, respectively) challenging the validity of the 1981 annexations of additional territory to the districts. The plaintiffs seek a share of the property tax revenue received by the defendant County of Sacramento (County) from the annexed territories, which they

claim should have been apportioned to them for services rendered to residents in the territories from 1981 to date.

The action comes 30 years too late. The applicable statute of limitations for the filing of the validation actions was 60 days from the date of execution of the certificates of completion of the annexations. (Gov. Code, § 56103, Code Civ. Proc., § 863.) That occurred on March 18, 1981, when the Local Agency Formation Commission (LAFCO) recorded certificates of completion of the annexations for the two cemetery districts.

The trial court sustained the defendants' demurrers without leave to amend. The trial court agreed with defendants that the complaint was barred by the statute of limitations and the plaintiffs appeal. Plaintiffs' primary argument on appeal is that the time for bringing a validation or reverse validation action never commenced because the annexation of territory was invalid. They claim that the validation actions were invalid because of the failure of the parties to enter into tax-sharing agreements.¹ We disagree.

¹ This is a curious argument. Without a tax-sharing agreement with the County the plaintiffs were not entitled to a share of tax revenues. As the trial court noted in its ruling sustaining plaintiffs' demurrer to the original complaint with leave to amend, "if Plaintiffs' argument were accepted, it would mean they have nothing to challenge at this point. That is, if the annexations were never complete, then there would be no basis for them to seek tax revenue which they allege they should have received as a result of the 1981 annexations. If the annexations were never completed, Plaintiffs might be able to seek some type of relief requiring completion of the annexations, but not monetary relief. Any claim for monetary

Because the point of bringing a validation action is to determine the validity of a public agency's acts, the period for bringing suit begins to run when the act of the agency is deemed complete. For purposes of the annexation of territory, the annexation was deemed complete when LAFCO executed certificates of completion of the annexations. Where, as here, no reverse validation action was filed within 60 days, the annexations became valid whether or not the proceedings leading up to the annexations were in fact legally valid.

We shall affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

Fair Oaks and Sylvan are public cemetery districts located in Sacramento County. In October 1980, the two districts met with LAFCO to discuss annexation of new territory to the districts.

In November 1980, Fair Oaks adopted Resolution No. 22 to initiate the application proceedings before LAFCO to annex new territory to the district. The resolution recited that the proceeding was pursuant to the District Reorganization Act of 1965, commencing at section 56000 of the Government Code.

On January 7, 1981, LAFCO adopted Resolution No. 756 approving Fair Oaks's application for annexation. The LAFCO resolution directed Fair Oaks to "initiate further proceedings in compliance with this resolution and applicable law[,] and

relief is necessarily based on the proposition that the annexations were complete."

"initiate annexation proceedings with notice and hearing, as specified under Government Code Section 56430, et. seq." The following month, Fair Oaks initiated the annexation proceeding by resolution.

However, Fair Oaks never passed a resolution for the exchange of revenues relative to the annexation. An unsigned resolution recited that Revenue and Taxation Code section 99, subdivision (b) required the County to establish a formula for the exchange of property tax revenues with respect to all properties subject to the jurisdictional change. The unsigned resolution further stated that LAFCO adopted the resolution approving the annexation with the understanding that no property tax base or growth increment was to be exchanged as a result of the annexation. A handwritten note at the bottom of the unsigned resolution stated that the Board of Trustees of Fair Oaks refused to sign the resolution.

Despite Fair Oaks's refusal to agree that the annexation would not involve a property tax exchange, LAFCO sent a Statement of Boundary Change for Fair Oaks to the Sacramento County Assessor and Recorder. The complaint alleges that despite an assertion to the contrary in the Statement of Boundary Change, no copy of Fair Oaks's resolution approving the annexation was ever attached to the Statement. The complaint alleges that Fair Oaks never adopted any such resolution.

Most importantly for purposes of this action, on March 18, 1981, LAFCO recorded a certificate of completion for the Fair

Oaks annexation that set forth the legal description of the territory annexed.

On July 7, 1981, the County Board of Supervisors adopted a resolution that no property tax base or growth increment would be exchanged between Fair Oaks and the affected taxing entities within the tax rate areas included in Fair Oaks's district.

On July 22, 1981, LAFCO wrote a letter to Fair Oaks stating that "your annexation of territory cannot be considered legal or complete" until Fair Oaks signed an AB8 property tax exchange agreement.² The letter stated: "Until your AB8 agreement is complete, your annexation is not final and, according to the law, you should not accept customers from the annexed territory."

Similarly, Sylvan adopted a resolution in November 1980 making application for annexation. On January 7, 1981, LAFCO adopted a resolution approving Sylvan's application and directing it to initiate annexation proceedings. Sylvan initiated the annexation process in February 1981, and one month later it adopted a resolution annexing the additional territory.

On March 18, 1981, LAFCO recorded a certificate of completion with the County Recorder for the annexation of territory to Sylvan. Three months later, on June 24, 1981,

² AB8 is Assembly Bill No. 8. It was a fiscal relief bill designed to lessen the impact of Proposition 13 on local governments. (*American River Fire Protection Dist. v. Board of Supervisors* (1989) 211 Cal.App.3d 1076, 1079.)

LAFCO sent Sylvan a letter stating that LAFCO and Sylvan's Board approved the annexation "with the understanding that the District would not receive a share of the property tax from the previously unserved territory." The letter asked Sylvan to adopt a resolution stating that no tax exchange would take place. On July 7, 1981, Sylvan passed a resolution stating: "no property tax base or growth increment [will] be exchanged between the Sylvan Cemetery District and the affected taxing entities within the tax rate areas included in the Sylvan Cemetery District." At the bottom of this resolution was the following statement: "With one exception, The Sylvan Cemetery District will reserve the right to renegotiate, at Budget time each Fiscal Year. Motion carried unanimously."

Plaintiffs initiated this action in January 2010. After defendants demurred to the original complaint, the trial court sustained the demurrer with leave to amend. The first amended complaint (complaint) contains 11 causes of action. Fair Oaks is the complainant in causes of action one through three, five and six, and eight through ten. Sylvan is the complainant in causes of action four, seven and eleven.

The first cause of action (by Fair Oaks) seeks damages against LAFCO for failure to comply with the requirements of former Government Code section 35351, which required that a certificate of completion provide the date the resolution was adopted ordering the annexation. (Stats. 1977, ch. 1253, § 35351, p. 4728.)

The second and fourth causes of action (by Fair Oaks and Sylvan) seek damages against LAFCO and County for failure to comply with former Revenue and Taxation Code section 99, subdivision (b), which directed that agencies affected by the change of organization meet to determine the amount of tax revenues to be exchanged.³ (Stats. 1979, ch. 282, § 59, p. 1030.)

The third cause of action (by Fair Oaks) seeks damages against County, again for violation of former Revenue and Taxation Code section 99, subdivision (b), and alleges that the county auditor was not authorized to allocate or pay any property tax revenue until it received notice that a property tax exchange agreement had been reached.

The fifth cause of action (by Fair Oaks) seeks damages for violating former Revenue and Taxation Code section 99.1. That section provided that if a special district involved in the negotiation for the exchange of property tax revenue among local agencies failed to adopt a resolution providing for the exchange of property tax revenue, the county would determine the exchange of property tax revenue, unless the special district was one which would provide services to the area where such services had

³ The operative version of section 99 in effect at the time of the annexation did not call for a meeting, but did call for a negotiation to determine the amount of tax revenues to be exchanged. (Stats. 1980, ch. 801, § 11, pp. 2513-2514.)

not been previously provided. (Stats. 1980, ch. 801, § 11.5, p. 2517.)

The sixth and seventh causes of action seek damages from County for violating former Government Code section 56482, which provided that any territory annexed to a district would be subject to the levying of taxes to provide payment of principal, interest and other amounts on any bonds or other contracts or obligations of the district. (Stats. 1965, ch. 2043, § 56482, p. 4729.)

The eighth cause of action is a declaratory relief action by Fair Oaks, alleging that LAFCO filed a certificate of completion for the Fair Oaks annexation in violation of the requirements of then Government Code section 35350. That section provided that LAFCO could prepare and execute a certificate of completion only if Fair Oaks's resolution ordering the change of organization was in compliance with the boundaries, modifications, and conditions specified by LAFCO in its resolution making determinations. (Stats. 1977, ch. 1253, § 35350, p. 4727.)

The ninth cause of action (by Fair Oaks) is against County for conversion of property tax revenue since 1981.

The tenth and eleventh causes of action are for declaratory relief, seeking a declaration that the Fair Oaks and Sylvan annexations were valid and that the districts are entitled to receive property tax revenue from the annexed areas.

The trial court found that the first through eighth causes of action were barred by the limitation periods in Government Code section 56103 and Code of Civil Procedure section 863, providing that any challenge to the annexations had to be brought within 60 days of the filing of the certificates of completion in March 1981. The court rejected plaintiffs' "contention that the limitation period never commenced because the 'annexation proceedings' were 'never completed' because 'the process was 'fatally flawed.'"

The trial court stated:

"Plaintiffs cannot circumvent the fact that the certificates were recorded in March 1981. Indeed, they allege so. . . . Plaintiffs had 60 days to challenge the annexations. They failed to do so. Plaintiffs present no authority that they may do so now, almost thirty years later."

The trial court further found that because plaintiffs did not respond to defendants' claim that the second through eighth causes of action were also barred by Code of Civil Procedure section 349.1, plaintiffs had conceded the application of that statute. Code of Civil Procedure section 349.1 states that an action to contest the validity of any action or proceeding to change the boundaries of a special district or other public entity must be brought within six months from the date of completion of the action or proceeding. The trial court likewise found plaintiffs had conceded that the ninth cause of action for conversion was barred by plaintiffs' failure to allege compliance with the Tort Claims Act, Government Code

sections 900, et seq. Finally, the trial court found that the causes of action for declaratory relief were barred because they were based upon the complaint's earlier allegations.

DISCUSSION

I

Action Barred by 60 Day Limitations Period

The applicable statute of limitations was set forth in former Government Code sections 56008 and 56009 and Code of Civil Procedure sections 860 and 863. Former section 56008 provided that an action "to determine the validity of a change of organization or a reorganization may be brought pursuant to Chapter 9 (commencing at Section 860) of Title 10, Part 2 of the Code of Civil Procedure." (Stats. 1965, ch. 2043, § 56008, p. 4673.) The action at issue here, the annexation of territory to a district, is considered a change of organization, pursuant to former Government Code section 56028, which provided in pertinent part that a change of organization includes an annexation of territory to a district. (Stats. 1965, ch. 2043, § 56028, p. 4678.)

Former Government Code section 56009 provided that for the purpose of contesting the validity of a change of organization, "such change of organization . . . shall be deemed to be completed and in existence upon the date of execution of the certificate of completion." (Stats. 1978, ch. 76, § 8, p. 211.)

Code of Civil Procedure section 860, which has remained unchanged since it was enacted in 1961, states that a public

agency may test the legal validity of "the existence of any matter which under any other law is authorized to be determined pursuant to this chapter" by filing an in rem action within 60 days. Such actions are referred to as validation actions.

(*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 960 (*Robings*).) Since former Government Code sections 56008 and 56009 authorized a validation action pursuant to Code of Civil Procedure section 860 to determine the validity of the annexation of territory to a district, and specified that the annexation would be deemed completed and in existence when the certificate of completion was executed, it follows that the 60 day period provided in Code of Civil Procedure section 860 commenced upon the execution of the certificate of completion.

Pursuant to Code of Civil Procedure section 863, an interested party may file a "reverse validation action" to test the validity of the public agency's acts. Such a proceeding must be brought within the same 60 day period. (*Robings, supra*, 188 Cal.App.4th at p. 960.) If the public agency's actions go unchallenged during the 60 day period, they are thereafter immune from challenge, whether legally valid or not. (*Ibid*; *California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420.)

The statutes of limitations for validation and reverse validation actions serve the important public policy of promptly settling all questions about the validity of the public agency's

actions. (*Hollywood Park Land Co., LLC v. Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 932.)

A. Trial Court Did Not Weigh Conflicting Facts

As stated, the trial court ruled that the first through eighth causes of action were barred by the 60 day statute of limitations for validation actions, stating that it rejected plaintiffs' contention that the statute of limitations never commenced because the annexation proceedings were never completed.

Plaintiffs argue that the trial court necessarily gave credence to the recorded certificates of completion, but not to the allegation that LAFCO wrote the districts informing them that the annexations were not complete, and that no tax sharing agreement existed. Plaintiffs argue the trial court accepted that the certificates of completion were valid, but ignored the fact that LAFCO informed the districts the annexation was not legal and that the steps necessary for the completion of the annexation were never taken.

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) In making its ruling on this issue, the trial court considered the only *material* fact pleaded in the

complaint, i.e., the date the certificate of completion was executed.

A material fact is a fact of consequence to the determination of the action. Whether a fact is material is "'determined mainly by the pleadings, the rules in pleading and the substantive law relating to the particular kind of case.'" (*People v. Hill* (1992) 3 Cal.App.4th 16, 29, overruled on another ground in *People v. Nesler* (1997) 16 Cal.4th 561, 582, citations omitted.) On the issue of when a reverse validation action must be brought, and therefore when the statute of limitations is commenced, the only fact of consequence to the determination was when the certificate of completion was executed.

The fact that LAFCO wrote a letter stating that the annexations were not legal or complete, as well as the fact that no tax sharing agreement was signed or that any other step required toward annexation was not taken was not material to the issue of whether 60 days had run from the date the annexation was completed. That date was determined solely by the execution of the certificate of completion, at which time the change of organization was "deemed to be completed" (Former Gov. Code, § 56009; Stats. 1978, ch. 76, § 8, p. 211.) After 60 days had passed, no action could be brought to challenge the annexation because it was deemed valid, whether or not it was in fact legally valid. (*California Commerce Casino, Inc. v. Schwarzenegger*, *supra*, 146 Cal.App.4th at p. 1420.)

Because the execution of the certificates of completion was the only fact material to the issue of when the statute of limitations commenced for bringing a validation action, the trial court did not improperly "engage in a weighing of the evidence[,] " but properly sustained the defendants' demurrer.

Appellants' argument is similar to one tendered in *Smith v. Mt. Diablo Unified School Dist.* (1976) 56 Cal.App.3d 412 (*Smith*). That case involved Code of Civil Procedure section 864, which applies section 860 to certain contracts of a public agency. The appellants argued that because the contract at issue had not been validly authorized, the 60 day period had not commenced. (*Id.* at p. 415.) Although the court eventually held that Code of Civil Procedure section 864 did not apply, it held that for the purpose of the validating statutes, the contract was formed when the school board approved the contract and authorized its execution. (*Id.* at pp. 416-417.)

The court stated: "The *validity* of the matters encompassed by Code of Civil Procedure sections 860-870 is the precise question to be answered thereunder; hence, cognizance under those sections is not based upon the *validity* of the substance or procedures attacked, but upon the specific definitions provided in Code of Civil Procedure section 864" (*Smith, supra*, 56 Cal.App.3d. at p. 416.) In this case, the validity of the annexation is the precise matter determined by the validation statutes. The only material question is whether the annexation was in existence for purposes of Code of Civil

Procedure section 860, not whether the substance of the procedures taken to accomplish the annexation was valid.

B. The Action was Necessarily Barred

Plaintiffs argue the action was not necessarily barred because some causes of action allege statutory violations, and statutory violations are not subject to validation actions. This argument fails because the statutory violations alleged are inextricably bound to the annexation of territory to the districts, which is the gravamen of plaintiffs' complaint.

At the time of the annexation, Revenue and Taxation Code section 99 (alleged by plaintiffs to have been violated in the second, third, and fourth causes of action) applied "[u]pon the filing of an application or a resolution pursuant to . . . the District Reorganization Act of 1965 (Part 1 (commencing with Section 56000) of Division 1 of Title 6 of the Government Code)[.]" (Stats. 1980, ch. 801, § 11, p. 2513.) Former Revenue and Taxation Code section 99.1 (alleged to have been violated in the fifth cause of action) specifically applied "for the purposes of Section 99[.]" (Stats. 1980, ch. 1220, § 4, p. 4136.) Former Government Code section 56482 (alleged to have been violated in the sixth and seventh causes of action), applied to "territory annexed to a district" and provided that such territory would be subject to the levying of taxes and assessments to provide for the payment of bonds. (Stats. 1965, ch. 2043, § 56482, p. 4729.)

Even though these causes of action are pleaded in the language of statutory violations, rather than as challenges to the validity of the annexations, the appropriate statute of limitations is determined by the “‘gravamen of a complaint and the nature of the right sued upon, rather than the form of the action or relief demanded[.]’” (*McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1165.) “[I]t is the nature of the governmental action being challenged rather than the basis for the challenge that determines the procedure to be utilized.” (*Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 468.)

Here, the gravamen of the plaintiffs’ complaint is that the annexation of territory to their districts was accomplished without any corresponding increase in revenue in the form of a larger tax base. They claim the annexation was invalid principally because there was no corresponding tax sharing agreement that would have increased their tax base. The tax sharing agreement required by Revenue and Taxation Code section 99 was required because of the annexations, and would not have been required had there been no annexations. The underlying issue is the alleged invalid annexation, which is properly the subject of a validation action.

II

1983 Validation Act

The trial court took judicial notice of the 1983 Validation Act. The act provided in pertinent part: “The boundaries of

every public body as heretofore established, defined or recorded . . . are hereby confirmed, validated, and declared legally established." (Stats. 1983, ch. 638, § 3, p. 2550.) It also provided: "Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation . . . of any public body, or for any annexation thereto, . . . must be commenced within six months of the effective date of this act[.]" (Stats. 1983, ch. 638, § 7, p. 2552.)

The 1983 Validation Act sets forth another limitation to an action contesting the validity of the annexation. Plaintiffs argue that there is a factual issue as to what the boundaries of the districts were in 1983. However, the only factual question relevant to the limitations issue posed by the 1983 Validation Act is whether the territory at issue from the 1981 annexation had been recorded as being within the boundaries of the districts. The certificates of completion, attached as exhibits to the complaint, indicated that the annexed territory had been recorded as territory included within the boundaries of the respective districts as early as 1981.

Plaintiffs argue again that even if the boundaries of the districts including the annexed territory were validated by the 1983 Validation Act, this did nothing to resolve the property tax issue. As previously indicated, the property tax issue was inextricably bound to the annexation of territory to the districts, and is subject to the same statutes of limitation.

Issues regarding the allocation of property taxes as a result of the annexations or whether the annexations were valid because of the failure enter into a tax-sharing agreement are matters that could have been resolved in an action to validate the annexations. Matters which could have been adjudicated in a validation action must be raised within the 60 day limitations period, or they are waived. (*McLeod v. Vista Unified School Dist.*, *supra*, 158 Cal.App.4th at p. 1165.)

Plaintiffs have not raised any argument as to the remainder of the trial court's ruling. The trial court found that by failing to raise any argument in opposition, plaintiffs had conceded the applicability of the six-month statute of limitations in Code of Civil Procedure section 349.1 to causes of action two through eight, and the bar of the Tort Claims Act to the ninth cause of action. We treat these issues as waived or abandoned. (*Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1096.)

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

HOCH, J.